

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Standing Rock Telecommunications, Inc.
Request for Limited Extension of Time to Submit
Bank Commitment Letter for Mobility Fund
Phase I Support (Auction 901)

ORDER

Adopted: September 11, 2013

Released: September 11, 2013

By the Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this order, we grant a request from Standing Rock Telecommunications, Inc. (SRTI) for a limited extension of time to submit a bank commitment letter in support of its long-form application for Mobility Fund Phase I support. Specifically, SRTI seeks an extension of time to file the required commitment letter, citing the unique difficulties it faces as a Tribally-owned entity, including the need to work with banks that lack familiarity with issues of Tribal jurisdiction and administration of trust lands in Indian Country, as well as the need to follow Tribal government approval processes. SRTI requests a four-week extension of time to file its bank commitment letter. After filing the request, SRTI submitted the required letter by its requested deadline. For the reasons set forth below, we grant SRTI's request.

II. BACKGROUND

2. Mobility Fund Phase I. SRTI's request arises out of its status as a winning bidder in the Commission's first auction of Mobility Fund Phase I support, which was designated Auction 901.

3. In the USF/ICC Transformation Order, the Commission comprehensively reformed and modernized the universal service system to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. The Commission's universal service reforms include a commitment to fiscal responsibility, accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past. For the first time, the Commission established a universal

1 Trust lands in Indian Country consist of lands the title to which are held in trust by the United States for Tribes or individual Indians.

2 Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform - Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 17668 ¶ 5 (2011) (USF/ICC Transformation Order), pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

3 Id. at 17667 ¶ 1.

service support mechanism dedicated exclusively to mobile services—the Mobility Fund.⁴ In Phase I of the Mobility Fund, the Commission set aside up to \$300 million in one-time high-cost universal service support to carriers that committed to provide 3G or better mobile voice and broadband services in areas nationwide where such services were unavailable.⁵ The Commission decided that Phase I funding would be awarded through a reverse auction mechanism and delegated to the Wireless Telecommunications Bureau and the Wireline Competition Bureau (together, the Bureaus) authority to implement this program.⁶

4. Bidding in Auction 901 took place on September 27, 2012.⁷ Winning bids were placed by 33 bidders, who were eligible to receive a total of \$299,998,632 in one-time Mobility Fund Phase I universal service support.⁸ Winning bidders, such as SRTI, were required to submit FCC Form 680, the post-auction long-form application, by November 5, 2012.⁹

5. *Bank Commitment Letter for Long-form Application.* In the *USF/ICC Transformation Order*, the Commission decided that winning bidders in a Phase I reverse auction should be required to post letters of credit (LOCs) as financial security prior to being authorized to receive Mobility Fund support.¹⁰ The Commission concluded that such an instrument would protect the government's interest in the funds it disburses in Mobility Fund Phase I.¹¹ The Commission decided that an irrevocable stand-by LOC would be the best financial instrument to minimize the possibility that Mobility Fund support would become property of a recipient's bankruptcy estate, thereby preventing the funds from being used promptly to accomplish the Mobility Fund's goals.¹² Accordingly, as part of the long-form application, a winning bidder must submit from a bank that is acceptable to the Commission either an LOC for each

⁴ *Id.* at 17773 ¶¶ 299-300.

⁵ *Id.* at 17773 ¶ 299; *see also* Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901, AU Docket No. 12-25, *Public Notice*, DA 12-641, 27 FCC Rcd 4725, 4727 ¶¶ 1-2 (2012) (*Auction 901 Procedures Public Notice*).

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, 17781, 17783 ¶¶ 299, 322, 329.

⁷ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4727 ¶ 1.

⁸ Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901; FCC Form 680 Due November 1, 2012, AU Docket No. 12-25, *Public Notice*, DA 12-1566, 27 FCC Rcd 12031, 12032 ¶ 1 (2012) (*Auction 901 Closing Public Notice*).

⁹ *See* 47 C.F.R. § 54.1005(b)(1) (“Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support shall file an application for Mobility Fund Phase I support no later than 10 business days after the public notice identifying them as winning bidders.”). In a public notice released on October 3, 2012, the Bureaus announced the results of Auction 901 and specified that long-form applications would be due on November 1, 2012. *Auction 901 Closing Public Notice*, 27 FCC Rcd at 12033 ¶ 6. On October 31, 2012, the Bureaus postponed the long-form application deadline to November 5, 2012. Mobility Fund Phase I Auction Long-Form Application Deadline Extended, AU Docket No. 12-25, *Public Notice*, DA 12-1736, 27 FCC Rcd 13424, 13424 ¶ 1 (2012).

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶¶ 443-47.

¹¹ *Id.* at 17811 ¶ 447.

¹² *Id.* at 17812 ¶ 449.

winning bid, or a written commitment letter to issue such an LOC.¹³ Section 54.1007(a)(1) of the rules provides the criteria for what is an acceptable bank.¹⁴

6. *SRTI Request for Extension.* SRTI is a wireless carrier that is 100% owned by the Standing Rock Sioux Tribe, a federally recognized Tribal Nation.¹⁵ In Auction 901, SRTI submitted four winning bids for \$3,320,527.21 in total assigned support for eligible areas within the Standing Rock Sioux Reservation.¹⁶ On November 5, 2012, SRTI timely filed its FCC Form 680, including all of the required attachments except for one—the required LOCs or an LOC commitment letter. On the same date, SRTI filed its request for a four-week extension of time to meet the LOC requirement.

7. In its petition, SRTI states that as of November 5, 2012, it had made inquiries with acceptable banks to secure a letter of commitment and the LOCs for each of its four winning bids.¹⁷ However, SRTI notes that as a Tribally-owned entity operating on a Reservation, it faces significant additional complexities in arranging financing and banking relationships.¹⁸ SRTI asserts that many banks, including those that are considered acceptable banks under the Commission's rules, are unfamiliar with the special rules pertaining to Tribal jurisdiction and the administration of trust lands in Indian Country.¹⁹ SRTI explains that many of these acceptable banks do not regularly provide banking services to Tribal entities, which prolongs and complicates the financing approval process.²⁰ SRTI further asserts that some banks “impose substantial hurdles on Tribal borrowers,” although SRTI does not describe those hurdles.²¹

8. SRTI also explains that it must follow Tribal government processes to obtain the Tribe's approval to procure LOCs from an acceptable bank.²² SRTI's petition is accompanied by a letter from Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe. Chairman Murphy explains that SRTI scheduled a meeting with the appropriate Tribal Council subcommittee in order to obtain the required approval; however, when the scheduled day arrived, the subcommittee was unable to meet and address SRTI's LOC approval.²³ Chairman Murphy indicates that no Tribal Council meetings that could have

¹³ 47 C.F.R. § 54.1005(b)(2)(vii); *USF/ICC Transformation Order*, 26 FCC Rcd at 17810 ¶ 444 & n.738, 17812 ¶ 450; *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4770-71 ¶ 169; *Auction 901 Closing Public Notice*, 27 FCC Rcd at 12036-37 ¶ 23.

¹⁴ 47 C.F.R. § 54.1007(a)(1). On November 1, 2012, the Bureaus waived section 54.1007(a)(1) on their own motion to allow Auction 901 winning bidders seeking authorization for Mobility Fund Phase I support to use CoBank, ACB as an issuing bank for the required LOC, in addition to the acceptable banks described in section 54.1007(a)(1). *Mobility Fund Phase I; Waiver of Section 54.1007(a)(1) of the Commission's Rules*, WC Docket No. 10-90, WT Docket No. 10-208, AU Docket No. 12-25, *Order*, DA 12-1747, 27 FCC Rcd 13457, 13457 ¶ 1 (2012).

¹⁵ *Petition of Standing Rock Telecommunications, Inc. for Temporary Waiver or Suspension of FCC Form 680 Filing Deadline*, at 1 (Nov. 5, 2012) (SRTI Petition).

¹⁶ *Auction 901 Closing Public Notice*, 27 FCC Rcd 12031, at Attachment A; SRTI Petition at 1.

¹⁷ SRTI Petition at 2.

¹⁸ *Id.*; see also Letter from Miles McAllister, General Manager, SRTI, to Julius Genachowski, Chairman, Federal Communications Commission, at 1 (Nov. 1, 2012) (McAllister Letter).

¹⁹ SRTI Petition at 2; McAllister Letter at 1; Letter from Charles W. Murphy, Chairman, Standing Rock Sioux Tribe, to Julius Genachowski, Chairman, Federal Communications Commission, at 1-2 (Nov. 1, 2012) (Chairman Murphy Letter); see also 47 C.F.R. § 54.1007(a)(1) (defining acceptable banks).

²⁰ SRTI Petition at 2; McAllister Letter at 1; Chairman Murphy Letter at 1-2.

²¹ SRTI Petition at 2; Chairman Murphy Letter at 2.

²² SRTI Petition at 2-3.

²³ Chairman Murphy Letter at 1.

addressed SRTI's need for the LOCs were scheduled to be held between the award of winning bids to SRTI and the November 5 long-form application deadline.²⁴ SRTI planned to meet with the Tribal Council formally during a meeting scheduled in the first full week of November, which would allow SRTI to go to the bank with the Tribe's authorization to obtain the required LOCs.²⁵ SRTI ultimately submitted its LOC commitment letter to the Commission on December 3, 2012, within the extended time period SRTI requested.

9. SRTI and Chairman Murphy note that granting the waiver request would be consistent with the Commission's broader policy of supporting Tribal efforts to expand the availability of telecommunications in Indian Country.²⁶ SRTI states that the support from Mobility Fund Phase I will be the next significant step in promoting telephone and broadband penetration on the Reservation, which will provide benefits such as improved quality of service, increased consumer choice, and access to reliable and affordable communications services throughout the Reservation, including for public safety and emergency services.²⁷

10. The Commission shares a historic federal trust relationship with federally recognized Tribes and has a longstanding policy of promoting Tribal self-sufficiency and economic development and of helping ensure that Tribes have adequate access to communications services.²⁸ Tribal governments play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country.

III. DISCUSSION

11. Based on the special circumstances presented by SRTI and the Standing Rock Sioux Tribe, we find that allowing a four-week extension of time for submission of the required LOCs or an LOC commitment letter will better serve the public interest than would strict adherence to the long-form application deadline that was announced by public notice pursuant to section 54.1005(b)(1).²⁹ Therefore, we waive the established November 5 deadline to allow SRTI to submit the required LOCs or an LOC commitment letter by December 3, 2012—the deadline that SRTI requested, and the date on which SRTI ultimately submitted its LOC commitment letter.

12. Section 1.3 of the Commission's rules provides that a rule provision or requirement may be waived "for good cause shown."³⁰ A waiver is appropriate only if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³¹ Moreover, in certain cases, a rule waiver may serve the public interest where we find that the waiver would not conflict with the policy underlying the rule.³²

²⁴ *Id.*

²⁵ *Id.*

²⁶ SRTI Petition at 3-4; McAllister Letter at 1; Chairman Murphy Letter at 2.

²⁷ SRTI Petition at 3-4.

²⁸ Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078, 4080-81 (2000) (*Tribal Policy Statement*).

²⁹ 47 C.F.R. § 54.1005(b)(1).

³⁰ See 47 C.F.R. §§ 1.3, 0.131(a).

³¹ See, e.g., *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); cf. 47 C.F.R. § 1.925(b)(3)(ii).

³² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969); cf. 47 C.F.R. § 1.925(b)(3)(i).

13. As we note above, the Commission has a longstanding policy of promoting Tribal self-sufficiency and economic development and of helping ensure that Tribes have adequate access to communications services.³³ The Commission has recognized its “fiduciary duty to conduct [itself] in matters affecting Indian tribes in a manner that protects the interests of the tribes” and its corresponding obligation to interpret “federal rules and policies . . . in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence.”³⁴ In line with these Commission policies, we respect the Standing Rock Sioux Tribe’s governmental approval process for a Tribally-owned entity to acquire LOCs from an acceptable bank, and we recognize that this process contributed to the delay in executing SRTI’s LOC commitment letter. We also have no reason to doubt that SRTI’s financing approval process was prolonged and complicated by the need to work with banks that lack familiarity with issues of Tribal jurisdiction and administration of trust lands in Indian Country.³⁵ In recognition of the unique and unavoidable challenges that SRTI, as a Tribally-owned entity operating on a Reservation, encountered when it was seeking to secure its LOC commitment letter, we find that there is good cause for a waiver to grant an extension of time for SRTI to obtain the LOC commitment letter from an acceptable bank. In this instance, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

14. Further, we find that grant of the requested waiver would not conflict with the policy objectives of prompt processing of long-form applications and prompt distribution of universal service support. Auction 901 was the Commission’s first Mobility Fund auction, and the forms, procedures, and requirements were new for Commission staff, for the Universal Service Administrative Company, and for applicants. In this context, the four-week delay in SRTI’s submission of its LOC commitment letter did not delay our processing of SRTI’s long-form application or the distribution of Mobility Fund Phase I support.³⁶

15. Based on the foregoing reasons, we waive the November 5 deadline established by public notice pursuant to section 54.1005(b)(1) of the Commission’s rules to allow SRTI to file its LOC commitment letter by December 3, 2012.

³³ *Tribal Policy Statement*, 16 FCC Rcd at 4080-81 (recognizing the Commission’s general trust relationship with, and responsibility to, federally recognized Tribes).

³⁴ Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a Bell Atlantic Mobile, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12263 ¶ 119 (2000).

³⁵ See *Federal Communications Commission Office of Native Affairs and Policy 2012 Annual Report*, at 7 (rel. Mar. 25, 2013), available at <http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf>.

³⁶ We note that SRTI’s waiver request was filed with its timely long-form application and that it submitted the required letter within the period it had requested.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, and 303(r), and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, and 1.3, the petition of SRTI for extension of the established November 5, 2012, deadline for submission of a written LOC commitment letter and/or LOCs is GRANTED and section 54.1005(b)(1) of the Commission's rules, 47 C.F.R. § 54.1005(b)(1), is WAIVED to the extent described above.

FEDERAL COMMUNICATIONS COMMISSION

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